

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEXT Payment Solutions, Inc.,

Civil No. 17 CV 8829

Plaintiff,

v.

Honorable Steven C. Seeger

CLEAResult Consulting, Inc.,

Defendant.

PLAINTIFF'S RESPONSE
TO DEFENDANT'S MOTION TO MODIFY SCHEDULING ORDER

Plaintiff, NEXT Payment Solutions, Inc. (“NEXT”) opposes Defendant, CLEAResult Consulting, Inc.’s (“CCI”) motion to modify the Scheduling Order. The sole basis for CCI’s request to modify the Court’s Pre-Trial Scheduling Order is to allow CCI a remarkable third opportunity to move for summary judgment. The Court has stated that “[t]riple rounds of summary judgment motions exhaust the parties and drain the judiciary’s resources. One round of summary judgment motions is typical. Two rounds of summary judgment motions are unusual. Three rounds of summary judgment motions are extraordinary.” Dkt. No. 454 at 12.

Titling its motion a “motion in limine” does not transform CCI’s summary judgment motion into a motion in limine. To the extent CCI files motions styled as motions in limine, the Court has ordered the parties to file responses by November 22, 2021. Unless the Court directs NEXT to respond to CCI’s motion in limine by some other date, NEXT shall respond to any such motions by the date ordered by the Court, November 22, 2021.

CCI's motion is a transparent attempt to have a third bite at the summary judgment apple. CCI seeks to remove a claim that has been present since the beginning of the case, and through a motion in limine, no less. Dkt. No. 36 at least ¶¶ 233-235. The Court has made clear that such delays will not be tolerated. The Court has stated that "[t]he parties and the Court already poured resources into the first two rounds of summary judgment briefing. A third time may be a charm, but not when it comes to motions for summary judgment." *Id.* at 11.

Furthermore, CCI has already made the same arguments to the Court that it is making in its motion in limine/summary judgment motion. CCI presented these same arguments in the Joint Statement submitted by the Parties. Dkt. No. 458. After reviewing the statements provided by both parties in the case, the Court determined that the trial would be a **ten-day trial** and provided its pre-trial schedule that **did not include another round of summary judgment** for CCI to once again relitigate a claim on the eve of trial. As the Court has acknowledged, "[t]his case is in the final stages, and it is time to bring this litigation (filed in 2017) to a close." Dkt. No. 454 at 1. For at least these reasons, NEXT opposes any modification to the Pre-Trial Scheduling Order that are premised untimely on a motion for summary judgment filed by CCI.

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully requests that the Court deny CCI's motion to modify the Pre-Trial Scheduling Order in its entirety.

Dated: September 20, 2021

Respectfully submitted,

PADMANABHAN & DAWSON, P.L.L.C.

By: /s/ Devan V. Padmanabhan

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